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**In The
Supreme Court of the United States**

October Term, 1964

No. **294**

ONE 1958 PLYMOUTH SEDAN,

Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA,

Respondent

**ANSWER TO THE
PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF PENNSYLVANIA**

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State Capitol
Harrisburg, Pennsylvania

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COUNTER-STATEMENT OF QUESTIONS INVOLVED

1. Do the rules of evidence pertaining to the validity and propriety of search in criminal prosecutions also apply to proceedings for the forfeiture of contraband?

2. Is a claimant to property which is contraband under the law entitled to have the contraband returned to him because the contraband was illegally seized by state officers?

3. Where Pennsylvania Liquor Control Board officers had knowledge or information that a late model black four-door Plymouth Sedan was delivering liquor into Pennsylvania from a dealer in South Jersey and where the agents spotted such a car in New Jersey bearing Pennsylvania plates and observed that the car was quite low in the rear and where these observations were made on December 16 which was at a time when the officers might well believe illegal liquor would be transported into Pennsylvania from New Jersey to meet the demands of the holiday trade; did the officers have reasonable and probable grounds to stop the vehicle in Pennsylvania and search it?

COUNTER-HISTORY OF THE CASE

On December 16, 1960, at 6:30 a.m. on the Admiral Wilson Boulevard in Camden, New Jersey, two enforcement officers of the Pennsylvania Liquor Control Board observed a 1958 Plymouth sedan bearing a Pennsylvania registration plate and the car was quite low in the rear. The officers followed the car over the bridge into Philadelphia, Pennsylvania and then stopped and searched the car and found it to be loaded with 375 bottles of liquor and wine, not bearing the seal of the Commonwealth of Pennsylvania. The owner and operator of the car stated to the officers that he had arranged to deliver a load of liquor from Margate, New Jersey to Philadelphia, Pennsylvania for \$30.00 and that he knew it was illegal but took a chance. The officers seized the car and liquor and arrested the driver of the car. The officer had neither a search nor body warrant (R. 5a-9a). One of the officers had reason to believe that a black, four-door Plymouth sedan was delivering liquor illegally from New Jersey into Pennsylvania (R. 10a, 11a). The Commonwealth of Pennsylvania filed petitions for forfeiture of the car and liquor in the Court of Quarter Sessions of Philadelphia and after hearing the trial judge held that the seizure of the car was founded upon evidence illegally obtained and dismissed the petition for forfeiture (R. 28a). Although the trial judge stated in his opinion that there was no testimony that the instant automobile is a four-door, black Plymouth sedan (R. 23a), it is apparent from the testimony of the officer that the instant car does, in fact, meet this description (R. 10a, 11a).

The Commonwealth of Pennsylvania appealed to the Superior Court of Pennsylvania which reversed the lower Court and directed forfeiture of the car.

The owner of the car then appealed to the Pennsylvania Supreme Court which affirmed the decision of the Superior Court. The Pennsylvania Supreme Court held that the validity and propriety of the search were not at issue by reason of the nature of the proceeding, i.e., a forfeiture procedure. The Pennsylvania Supreme Court Opinion concluded:

"The legislature has seen fit to declare the non-existence of property rights in any automobile used in the illegal transportation of liquor and that such an automobile is contraband. Under the decisional law of both federal and state courts, *supra*, we are satisfied that, even if the instant automobile had been illegally seized, such fact would not preclude the instant civil proceeding of forfeiture."

"We do not, nor need we, for the reasons set forth in this opinion, pass upon the validity of the seizure of this automobile. The validity of such seizure is of no moment in this proceeding."

4 *Constitutional and Statutory Provisions Involved*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the Constitutional and Statutory Provisions set forth in Petitioner's brief, the following apply in the instant case:

The Twenty-first Amendment to the Constitution of the United States provides in Section 2:

"The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

The Pennsylvania Liquor Code, Act of April 12, 1951, P. L. 90, Purdon's Pennsylvania Statutes Annotated, Title 47, Section 491, provides in pertinent part as follows:

"It shall be unlawful—

"(2) For any person, except a manufacturer or the board or the holder of a sacramental wine license or of an importer's license, to possess or transport any liquor or alcohol within this Commonwealth which was not lawfully acquired prior to January first, one thousand nine hundred and thirty-four, or has not been purchased from a Pennsylvania Liquor Store or in accordance with the board's regulations. The burden shall be upon the person possessing or transporting such liquor or alcohol to prove that it was so acquired . . ."

"(4) For any person, except a manufacturer or the board or the holder of an importer's license, to

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have or keep any liquor, except wine, within the Commonwealth unless the package (except the decanter or other receptacle containing liquor for immediate consumption) in which the liquor is contained while containing that liquor bears the official seal of the board as originally affixed in accordance with the provisions of this act or the regulations of the board . . ."

ARGUMENT

1. Contraband which has been seized by the State should not be returned to a claimant.

The Twenty-first Amendment to the Constitution of the United States prohibits the transportation or importation into any State in violation of the laws thereof. The laws of Pennsylvania provide in the Liquor Code, Section 491 (2) and (4) that it shall be unlawful, with certain inapplicable exceptions, for any person to possess or transport any liquor within the Commonwealth which has not been purchased from a Pennsylvania Liquor Store or to have any liquor within the Commonwealth unless the package in which the liquor is contained bears the official seal of the Liquor Control Board. The Liquor Code, in Section 601, declares that no property rights shall exist in any liquor illegally possessed or in any vehicle used in the illegal transportation of liquor and that the same shall be deemed contraband and may be forfeited.

The evidence clearly shows that the liquor was unlawfully imported, transported and possessed in Pennsylvania in the vehicle which was the subject of the forfeiture proceedings. This is not denied by Petitioner whose complaint is limited to the method by which the evidence was obtained. Petitioner contends that the search and seizure of the car was unreasonable and that the evidence thus obtained must be excluded as it would be in a criminal prosecution. Thus, the Petitioner requests that contraband in which no property rights exist under Penn-

sylvania law should be returned to the claimant. The vehicle is just as much contraband as the liquor which was transported in the vehicle yet it is significant that forfeiture of the liquor is not contested.

The clear distinction between application of the exclusionary rule in criminal cases and in cases involving forfeiture procedure for condemnation of contraband is fully covered in the well reasoned opinion of the Pennsylvania Supreme Court.

2. In the instant case there was reasonable cause for search and seizure by a Pennsylvania Liquor Control Board officer.

Considering the totality of circumstances the search of the vehicle in question was based on reasonable and probable cause.

Your Honorable Court held in the case of *Carroll v. United States*, 267 U.S. 132 (1925), at pages 159, 160, that the Court is bound to take notice of public facts and geographical positions. It is general knowledge that liquor consumption rises at the holiday season. Further, it is general, local knowledge that liquor prices are higher in the monopoly State of Pennsylvania than they are in the adjacent State of New Jersey and that New Jersey liquor is illegally brought into Pennsylvania over the Camden, New Jersey-Philadelphia, Pennsylvania bridges.

The enforcement officers had information that a black four-door late model Plymouth sedan was delivering liquor from New Jersey into Pennsylvania. The incident in this case occurred on December 16 which was at a time when

the officers might well believe that liquor was being transported into Pennsylvania from New Jersey to meet the heavy demands of the holiday trade. The officers saw this late model black four-door Plymouth at 6:30 a.m. and observed that the car was riding quite low in the rear. They followed the car from New Jersey across the bridge into Pennsylvania where they stopped the car, searched the car, found a large quantity of liquor which did not bear Pennsylvania seals, seized the liquor and the car and arrested the driver who admitted he was paid \$30.00 to transport the liquor from New Jersey into Pennsylvania. The evidence presented by the officers was not contradicted and there is no factual question involved.

The provisions of the Constitution of Pennsylvania which secures the citizens against unreasonable search and seizure does not apply to property, the possession of which had been absolutely prohibited by statute (*Commonwealth v. Rubin*, 82 Pa. Superior Ct. 315). While this case was decided under the prohibition act, it is just as illegal to have liquor purchased in New Jersey in a car in Pennsylvania today as it was to have untaxed liquor during prohibition days.

In this case, we are concerned with the forfeiture of a motor vehicle and not a motion to suppress evidence in a criminal case. The forfeiture of this motor vehicle is not criminal (*Commonwealth v. One 1927 Graham Truck*, 165 Pa. Superior Ct. 1 (1949)).

The leading case in this field is *Carroll v. United States*, supra, in which Federal officers stopped and searched a car they knew to be involved in bootlegging. The officers had no warrants, but seized liquor found in the automobile. In upholding this search and seizure, the Court said at page 149:

"On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid."

Again, at page 153:

"... the guaranty of freedom from unreasonable search and seizure by the Fourth Amendment has been construed, practically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect to which a proper official warrant readily may be obtained and a search of a ship, motor, wagon or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."

Thus, the rule has been established that a motor vehicle may be stopped and searched, without a warrant, if the officer has probable cause to believe that it contains property which is subject to seizure.

Regardless of the type of case, the rule is that if a search and seizure without a warrant is made with probable cause, that, is, upon a belief, reasonably arising out of circumstances known to the seizing officer that an automobile or other vehicle might contain that which by law is subject to seizure and destruction, the search and seizure are valid.

In this case, we have more than the bare fact that the car "was low in the rear, quite low." We have the

fact that the officers knew that the trade in liquor in New Jersey for transportation into Pennsylvania was quite brisk at this time which was prior to the Christmas holiday. They were looking for a car similar to the one they followed and stopped. They spotted the subject car in New Jersey and followed it for over fifteen minutes before stopping it. The trailing of the automobile began on the New Jersey side of the bridge and proceeded into Philadelphia where the car was stopped. The time is also important. It was 6:45 in the morning when they stopped the car (R. 5a, 6a).

The search for and seizure of stolen or forfeited goods or goods liable to duties and concealed to avoid the payment thereof are totally different things from a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained or using them as evidence against him. In the one case the government is entitled to the possession of the property; in the other, it is not. The seizure of stolen goods is authorized by the common law and the seizure of goods forfeited for a breach of revenue laws or concealed to avoid the duties payable on them has been authorized by English statutes for at least two centuries past; and the like seizures have been authorized by the Internal Revenue Acts of the United States from the commencement of the government and are also authorized in the Liquor Code. In fact the Liquor Code in Section 209 specifically authorizes the search of a vehicle without a warrant upon reasonable and probable cause. This section of the Liquor Code, as does the Fourth Amendment of the Federal Constitution, recognizes the necessary difference between the search of a store, dwelling house or other structure in respect to which a proper official warrant readily may

be obtained and a search of a ship, motor boat, wagon or automobile for contraband goods.

The only requirement is that the officer shall have reasonable or probable cause for believing that the automobile which he stops has contraband liquor therein which is being illegally transported. All the facts in this case when taken together certainly show that the officers had this reasonable cause. The Court in deciding and also the appellate court in reviewing the case is bound to take notice of public facts and geographical positions.

The court must consider the location of the car when it was first observed, the fact that it was 6:30 in the morning and the fact that the incident occurred right before the Christmas holidays as well as the fact that the officers knew a similar car was engaged in the transportation of liquor from New Jersey. The test is that if the facts and circumstances before the officers are such as to warrant a man of prudence and caution in believing that the offense has been committed, it is sufficient: *Carroll v. United States* (supra). Certainly what is a reasonable search and seizure is not to be determined by any fixed formula nor is the state court, in view of the decision of *Mapp v. Ohio*, 367 U.S. 643, prevented from applying its own rather than a federal criteria of "reasonableness" in determining whether a particular search and seizure was reasonable. Reasonableness of a search must be determined on an ad hoc basis (*Commonwealth v. Bosurgi*, 411 Pa. 56; *Commonwealth v. Cockfield*, 411 Pa. 71).

3. Are the Pennsylvania Courts bound by the United States Supreme Court standards of "reasonable cause" in search and seizure cases?

In *Ker v. California*, 374 U.S. 23 (1963), 10 L. Ed. 2d 726, 83 S. Ct. , the United States Supreme Court made clear that the principles which it enunciates governing the admissibility of evidence in federal trials are derived not only from the Constitution but also from the rules of evidence formulated by that court in its supervisory authority over federal courts. The opinion in *Ker* emphasized that the United States Supreme Court has not assumed such supervisory authority over state courts and that there has been "no total obliteration of state laws relating to arrests and searches in favor of federal law."

In the instant case it has been established that the Commonwealth is confronted with a law enforcement problem which becomes increasingly difficult as the State boundaries are approached. At the state boundary lines the probability of cars containing liquor being brought into the State illegally is greater than in the interior portions of the State. As the "probability" increases, the test of "reasonableness" should be varied. Where, as here, a heavily weighted car has just come into the State in the dark of an early hour of the morning, there is "reasonable probability" that the car may contain contraband liquor and, therefore, "reasonable cause" for the officers to search for contraband.

CONCLUSION

The right of the Commonwealth of Pennsylvania to regulate the importation and transportation of liquor within its borders is secured to the State by the Twenty-first Amendment to the Constitution of the United States. In the proper regulation of the importation and transportation of liquor the laws of the Commonwealth provide that vehicles used in the illegal transportation of liquor shall be deemed contraband in which no property rights shall exist. Condemnation and forfeiture of such contraband provides a salutary and efficient means of controlling the liquor traffic and the return of contraband to a claimant would violate Pennsylvania law and public policy.

The opinion of the Pennsylvania Supreme Court in this case amply demonstrates that the rules of evidence pertaining to search and seizure in criminal prosecutions have no application to proceedings in rem for the forfeiture of contraband. However, the evidence further shows that in this case there was reasonable and probable cause for the officers to stop and search the contraband vehicle.

The Commonwealth of Pennsylvania submits that the petition should be denied.

Respectfully submitted,

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